

October 20, 2005

OIL AND GAS DOCKET NO. 20-0239495

APPLICATION OF MICHAEL KEITH HAHN TO CONSIDER REMOVAL OF HIS PERMITTING DISQUALIFICATIONS UNDER TEXAS NATURAL RESOURCES CODE §91.114 RESULTING FROM HIS ASSOCIATION WITH CORE E&P CORP. (178381). APPLICANT FURTHER REQUESTS REMOVAL OF HIS NAME FROM THE COMMISSION'S CURRENT P-5 RECORDS FOR CORE E&P CORP.

FIRST AMENDED PROPOSAL FOR DECISION

HEARD BY: Marshall Enquist, Hearings Examiner

APPLICANT:

Rex H. White, Jr., Attorney
Michael Keith Hahn

REPRESENTING:

Michael Keith Hahn
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INTERVENOR/PROTESTANT:

Reese Copeland, Enforcement Attorney RRC

PROCEDURAL HISTORY

Date of Application:	July 13, 2004
Date of Notice:	July 29, 2004
Date of Hearing:	March 10, 2005
PFD Circulation Date:	July 27, 2005
First Amended PFD Circulation Date:	October 20, 2005

EXAMINERS' REPORT AND PROPOSAL FOR DECISION

STATEMENT OF THE CASE

This is the application of Michael Keith Hahn (“Hahn”) requesting the Commission to remove his permitting disqualifications under Texas Natural Resources Code §91.114. In Oil & Gas Docket No. 03-0233966, Mr. Hahn was found to be a person “in a position of ownership or control” of a P-5 organization (“Core E & P, Corp.” or “Core Exploration and Production Corporation”, hereinafter “Core”) at the time that organization committed a violation of Commission rules. The Final Order in Oil & Gas Docket No. 03-0233966 was signed by the Commissioners on September 22, 2003 and became final and unappealable on October 15, 2003. As a result, for a period of seven years (until October 15, 2010), the Commission will not process any P-5 Organization Report,

permit application or P-4 Certificate of Compliance received from Mr. Hahn or any organization with which he is affiliated as specified in TNRC §91.114.

On December 12, 2003, Hahn attempted to renew the P-5 Organization Report for Preferred Pipeline Corp., in which he is listed as the Resident Agent, and President/Secretary. The renewal was not accepted by the Commission, due to the final and unappealable order in Docket No. 03-0233966 against Core and the seven year taint it attached to Hahn pursuant to TNRC §91.114.

Core was also the subject of Oil & Gas Docket No. 03-0235020, but the Final Order in that docket is presently being appealed in District Court and is not yet final. Consequently, the findings in that docket are not being considered in this proceeding.

Hahn contends that the terms of an “Order After Status Conference” issued by a United States Bankruptcy Judge, Wesley W. Steen, in the United States Bankruptcy Court for the Southern District of Texas, Victoria Division, demonstrate that he was not “in a position of ownership or control” of Core at the time that Core violated Commission rules, and that his permitting disqualification under §91.114 should be removed.

Originally scheduled to be heard on August 18, 2004, the actual hearing was delayed by the resignation of Mr. Hahn’s original counsel and a continuance, granted at Hahn’s request in order to secure new counsel and give that counsel time to familiarize himself with the facts of the case.

After the hearing, Hahn’s counsel requested a copy of the hearing tapes (Tape 1 and Tape 2) in order to make a transcript. In the course of the copying process, Tape 1 was accidentally erased. Counsel for Hahn was notified and, by letter dated May 13, 2005, was given a choice of re-opening to make a new record or going forward based solely on the examiner’s notes of the contents of Tape 1, Exhibits 1 through 23 as offered into evidence, and the remaining Tape 2. By letter dated May 13, 2005, Counsel for Hahn asked the examiner to proceed using notes. In due course, a PFD was issued on July 27, 2005. Exceptions were received August 11, 2005. The Exceptions were lengthy and contained an accusation that the examiner and his staff had destroyed the transcript of testimony of Hahn.

In response to the accusation of destruction of the record, the examiner, by letter ruling, determined to re-open the hearing and make a complete record. Counsel for Hahn objected and filed an Appeal of Examiner’s Ruling. The appeal was heard in conference on October 4, 2005 and a majority of Commissioners granted the appeal.

The examiner’s affidavit and notes are now in the file. The notes demonstrate that official notice was taken of Docket Nos. 03-0233966, 03-0235020 and 20-0239494, as well as any other docket in which Michael Keith Hahn was involved as an officer of the respondent P-5 organization (Core). Notice was also taken of any Commission records relating to any P-5 entity in which Hahn was listed as an officer. The examiner hereby additionally takes official notice of the post-hearing

briefs filed by the parties, official records relating to amendments to TNRC §91.114 in 1997 and records relating to the amendment of Commission Statewide Rule 78 in 2003.

LEGAL BACKGROUND

Under Texas Natural Resources Code §91.114, the Commission may not accept a Form P-5 Organization Report, P-4 Certificate of Compliance or an application for a permit from an organization if any person holding “a position of ownership and control” in that organization also held, within a period of seven years, a position of ownership or control in another organization that violated “a statute or commission rule, order, license, permit, or certificate that relates to safety or the prevention or control of pollution”.

Under the statute, the meaning of the term “position of ownership or control” is defined by TNRC §91.114(c):

- (c) Regardless of whether the person’s name appears or is required to appear on the organization report required by Section 91.142, a person holds a position of ownership or control in an organization if:
 - 1.) the person is:
 - (A) an officer or director of the organization;
 - (B) a general partner of the organization;
 - (C) the owner of a sole proprietorship organization;
 - (D) the owner of at least 25 percent of the beneficial interest in the organization;
 - or
 - (E) a trustee of the organization; or
 - 2.) the person has been determined by a final judgment or final administrative order to have exerted actual control over the organization.
- (underlining added)

Under the Commission’s Statewide Rule 78(a)(8), officers and owners are defined as follows:

- (a)(8) Officers and owners - Any persons owning or controlling an organization including officers, directors, general partners, sole proprietors, owners of more than 25% ownership interest, any trustee of an organization, and any person determined by a final judgment or final administrative order to have exercised control over the organization.

SWR 78(m) describes the results of outstanding violations on renewals, applications and certificates:

- (c) Effect of outstanding violations.
 - (1) Except as provided in paragraph (2) of this subsection, the Commission shall not accept an organization report or an application for a permit or approve a certificate of compliance for an oil lease or gas well submitted by an organization if:

- (A) the organization has outstanding violations; or
- (B) an officer or owner of the organization, as defined in subsection (a) of this section, was, within seven years preceding the filing of the report, application, or certificate, an officer or owner of an organization and during that period, the organization committed a violation that remains an outstanding violation.

In addition, SWR 1(a)(4) requires:

- (4) The organization report shall contain the following information:
 - (A) The name, street address, mailing address, telephone number and emergency after-hours telephone number of the organization;
 - (B) the plan of the business organization;
 - (C) for each officer, director, general partner, owner of more than 25% ownership interest, or trustee (hereinafter controlling entity) of the organization:
 - (i) that entity's or individual's full legal name, the names(s) under which such entity or individual conducts business in the State if Texas, and all assumed names;
 - (ii) the following:
 - (I) if the entity is an individual, his or her social security number. Any individual who does not have a valid social security number shall submit, at that person's option, either his or her valid driver's license or Texas State Identification number;
 - (II) if the entity is not an individual, the name and, at that person's option, either the valid driver's license, social security number, or Texas Identification number of each officer, director, or other person, who, under Texas Natural Resources Code, 91.114, holds a position of ownership or control of the organization, or an active P-5 number for that entity. All controlling entities connected to an organization which are not individuals shall provide the identification of the individuals in ownership or control of those entities.
(underlining added)

DISCUSSION OF THE EVIDENCE

HAHN'S POSITION

In 1989, a Commission-recognized P-5 organization named Fischer Operating Corporation was formed. By amendment of its Articles of Incorporation, its name was changed to Core Energy Corporation in 1998. By further amendment to its Articles of Incorporation filed with the Secretary of State on May 24, 1999, its name was changed to Core Exploration and Production Corporation. A Form P-5 filed by Core on November 9, 2001 listed Michael Keith Hahn as the president of Core.

On December 15, 2001, an annual shareholder meeting was held. The minutes of the meeting indicate it was called to order by M.K. Hahn, the chairman of Core Exploration and Production Corporation and owner of the only outstanding shares (1,000) of capital stock in the corporation. The minutes described changes in shareholders since the previous meeting, noting that O.S. Hahn had transferred 1,000 shares of stock to M.K. Hahn.¹ It was then stated that O.S. Hahn and M.C. Guerra resigned as directors of the corporation.

In his capacity as president of Core, Hahn signed P-4s for 4 oil leases and one gas well in Jefferson County on December 6, 2001. A few months later, on May 10, 2002, the District Court in Victoria County, 24th Judicial District, appointed a receiver for the assets and property of Core and Del Rio Energy, LLC. Shortly thereafter, on May 22, 2002, Hahn resigned as president of Core.

On June 20, 2002, Core was placed in Chapter 7 Involuntary Bankruptcy and George Stone was appointed Trustee. On July 1, 2002, the P-5 for Core E&P Corporation became delinquent. Almost nine months later, on March 19, 2003, Notice of the Original Complaint in Oil & Gas Docket No. 03-0233966 was sent to Core, followed by the First Amended Complaint in that docket on April 3, 2003. Core was charged with violations of Statewide Rule 14(b)(2) which arose after its P-5 became delinquent. Core did not appear at the hearing and it proceeded on a default basis. On September 22, 2003, the Commissioners signed the Final Order in Oil & Gas Docket No. 03-0233966, which was issued September 23 and became final and unappealable 23 days later on October 16, 2003.

Hahn argues that a ruling by the United States Bankruptcy Court for the Southern District of Texas, Victoria Division, proves that the officers of Core were not in a position of “ownership or control” after June 20, 2002. The March 9, 2004 ruling, in Case No. 02-36809-V-7, titled “Order After Status Conference”, states:

“The Trustee stipulates, and the parties present agree, that by virtue of the provisions of 11 U.S.C. §323(a), since June 20, 2002, Susana Hahn, Cathy Guerra and Keith Hahn were not individually or collectively a representative of the bankruptcy estate of Core Exploration and Production Corporation (“Core”), were not responsible for the corporate affairs of Core, were not in control of the corporate assets of Core, never executed actual control over Core, could not assume such control and were unable and without authority to respond to any actions solely against Core initiated by any oil and gas regulatory agency, including without limitation the Railroad Commission of Texas. However, nothing in this Order shall impact or pre-determine any independent liability Keith Hahn, Susana Hahn or Cathy Guerra may have to the Railroad Commission of Texas.”

On February 24, 2005, shortly before the hearing date for this docket, Hahn attempted to

¹ The transfer of 100% of the stock in Core to Michael Keith Hahn was pursuant to the terms of a divorce decree between Otilia Susana Hahn and Michael Keith Hahn in Cause No. 01-10-57, 199-A, District Court, 24th Judicial District, Victoria County, Texas. Under the terms of the decree, Michael Keith Hahn also received 100% of the issued and outstanding shares of Preferred Pipeline Corp. (Op. No. 676063), 100% of the issued and outstanding shares of OSR Oil & Gas Corp. (Op. No. 627882), 100% of the issued and outstanding shares of Fischer Petroleum Corp. (Op. No. 269150), 100% of the issued and outstanding shares of Gastex, Inc. (Op. No. 297092), 100% ownership interest in Del Rio Energy, LLC (does not show up on Commission mainframe but possibly related to Del Rio Pipeline Corporation, Op. No. 210635) and 100% ownership interest in West Texas Operating, LLC (Op. No. 910346).

The following entities were not listed in the decree, but Michael Keith Hahn has also been listed as an officer in Quantum Energy Company (Op. No. 684511), Bear Operating Corp. (Op. No. 060123), MEC Energy Corporation (Op. No. 557070), Bear Gas, Inc. (Op. No. 060121), and Bear Oilfield Services (Op. No. 060122).

donate his 1,000 outstanding shares of stock in Fischer Operating Corporation, which through several name changes had become Core Exploration and Production Corporation, to the bankruptcy trustee, George Stone, who was in charge of the assets of Core E & P Corporation. By this donation, Hahn attempted to divest himself of any remaining interest in Core E & P Corporation. Whether the possession of 1,000 shares of stock in Core at the time of the violations in Docket No. 03-0233966 signified an ownership interest or a beneficial interest is the heart of Hahn's argument.

By letter dated March 7, 2005, the Texas Comptroller of Public Accounts, Carole Keeton Strayhorn, certified that Core Exploration and Production Corporation was in good standing with the Comptroller, having no franchise tax reports or payments due at that time. Attached was a page titled "Corporation Search Results" showing George Stone, Trustee, as the officer or director of Core. By letter dated March 7, 2005, Roger Williams, Secretary of State of Texas, certified that Core Exploration and Production Corporation was active in the State of Texas.

Hahn argues that after the bankruptcy trustee was appointed on June 20, 2002, that the officers and directors of Core no longer were in control of Core. Hahn further argues that although he was the owner of all 1000 outstanding shares in Core, he was not the owner of 25% or more of the beneficial interest in Core. Hahn relies on a dictionary definition of a "beneficial interest" which is expressed thus;

"a right or expectancy in something (such as a trust or estate), as opposed to legal title to that thing. For example, a person with a beneficial interest in a trust receives income from the trust but does not hold legal title to the trust property."

Black's Law Dictionary, Seventh Edition. Core also quotes a definition of "beneficial owner", found in Black's as a subheading under "owner", and defined as

"1. One recognized in equity as the owner of something because use and title belong to that person, even though legal title may belong to someone else; esp., one for whom property is held in trust.-- Also termed *equitable owner*. 2. A corporate shareholder who has the power to buy or sell the shares, but who is not registered on the corporation's books as the owner."

Black's Law Dictionary, Seventh Edition. Hahn asserts that this is important because TNRC §91.114 has been amended over the years. Prior to 1997, TNRC §91.114(a)(1) read, in part, "...an officer, director, general partner, owner of more than 25 percent ownership interest, or trustee of the organization....". But by Acts 1997, 75th Leg., Ch. 121, §1, eff. Sept. 1, 1997, the phrase "ownership interest" was deleted and replaced with the phrase "beneficial interest". In Hahn's view, in order that he be subject to the permitting disqualification under TNRC §91.114, the use of the term "beneficial interest" necessarily implies the existence of a trust with himself as named beneficiary. Because no such trust existed, Hahn argues that TNRC §91.114 cannot be applied to him.

Hahn argues that because he was not in a position of "control" of Core after June 20, 2002 and because he did not possess a "beneficial interest" under a trust in Core, he does not meet the requirements of TNRC §91.114 for disqualification from permitting and the P-5 application for Preferred Pipeline Corp. should be processed and approved.

Hahn additionally requests that his name be removed from the Commission's records of the

P-5 Organization Reports of Core E&P.

ENFORCEMENT'S POSITION

Enforcement argued that the plain meaning of the words “a position of ownership or control” compels the conclusion that ownership of 100% of the stock of a corporation represents “at least 25% of the beneficial interest in the organization”. Enforcement argues that a stockholder is entitled to receive any dividend paid by a company and that a dividend is a beneficial interest. As the sole shareholder of Core, Hahn was entitled to all of any dividend paid by the organization, and could elect the directors who in turn could elect the officers. The officers are required to operate the organization for the benefit of the shareholders, thus Hahn had at least 25% of the beneficial interest in Core as required under Texas Natural Resources Code §91.114.

Enforcement also notes that after SB 639 was passed and became effective in 1997, the Commission amended Statewide Rule 78. The amendments were adopted in October of 2003, at 28 Tex. Reg. 8890, defining “Officers and Owners” as “Any persons owning or controlling an organization including officers, directors, general partners, sole proprietors, owners of more than 25% ownership interest, any trustee of an organization, and any person determined by a final judgment or final administrative order to have exercised control of the organization.” Enforcement argues that whether one uses the common sense or plain meaning, or words of art, or considers the history or the purpose of the legislation, or the administrative construction by the agency charged with implementing the statute the result is the same. One hundred percent of the stock ownership of a corporate organization confers at least 25 percent of the beneficial interest in the organization.

EXAMINERS' OPINION

I. Hahn's Permitting Disability as a Person in “Control” of Core

The record shows that Hahn resigned as President of Core shortly prior to the appointment of the bankruptcy trustee and prior to the filing of the complaint that resulted in the unappealable Final Order in Oil & Gas Docket No. 03-0233966. Hahn's resignation as president of Core on May 22, 2002, preceded the date (July 1, 2002) that Core's P-5 became delinquent, said delinquency initiating the time frame in which the Statewide Rule 14(b)(2) violations occurred in Docket No. 03-0233966. Additionally, the March 9, 2004 ruling of the United States Bankruptcy Court for the Southern District of Texas clearly states that Michael Keith Hahn was not in control of Core after the appointment of George Stone, Bankruptcy Trustee, on June 20, 2002. Thus, Hahn was not an officer of Core nor in a position of “control” of Core at the time the final element of the violations at issue ripened. Enforcement does not contend that the permitting disqualification in TNRC §91.114 attach to Hahn based on his position as an officer or his control of Core at the time of the violations in Docket No. 03-0233966.

II. Hahn's Permitting Disability as a Person with at Least 25 Percent “Beneficial Interest”

of Core

A. The Commission's Use of the Term "Beneficial Interest"

Hahn's argument rests on a narrow interpretation of the TNRC §91.114(c)(1)(D), which states that a person holds a position of ownership or control in an organization if the person is "...the owner of at least 25 percent of the beneficial interest in the organization." Hahn insists that the words "beneficial interest" must be interpreted as a term of art, implying the necessary existence of a trust of which the person described under the statute is the beneficiary of. Such a narrow definition would be inconsistent with the statute and was never the intention of the Commission.

The earlier version of the statute, promulgated in 1991 under TNRC §91.110, placed a five-year taint on persons found to be officers or owners of an organization in violation of Commission rules if they owned "...at least 25 percent of the ownership interest in the organization." In 1993, these provisions were transferred to TNRC §91.114, unchanged. After several years of experience, the Commission found the five year taint as applied under the statute to be ineffective. Tainted individuals simply formed new P-5 Organizations and used the names of their relatives, employees, or other persons who could be persuaded to be listed on a P-5 Organization Report as officers. The putative officers functioned merely as figureheads and the previously tainted officers continued in business, though not in their own names. They also continued to receive the revenues from their new ventures with no evident, or provable trace of ownership in those businesses.

In an effort to correct this problem, the Commission worked with the legislature to substantially rewrite TNRC §91.114 in 1997. The reason for the revision, as stated in a Bill Analysis dated February 20, 1997, was that "This section is not flexible and is not effective against violators."

The introduced version was modified by a Committee Substitute which is the language as passed and currently effective. The report for the Substitute version, dated March 2, 1997, also stated, "This (existing) section is not flexible and is not effective against violators." The report in its analysis of paragraph (c) states;

- (c) "Provides that, regardless of whether the person's name appears or is required to appear on the organization report.....a person holds a position of ownership or control in an organization if, among other options, the person is the owner of at least, rather than more than, 25 percent of the beneficial, rather than ownership, interest in the organization..."

The Commission's own records (from the Intergovernmental & Public Relations section) of the amendments to Senate Bill 639, which amended TNRC §91.114, contain the following handwritten note regarding the change to the term "beneficial interest": "Slightly expands the persons within the definition of 'position of ownership or control' to encompass situations where the P-5 officers are found to be fronts for the real party in interest."

As a response to the creativity employed by tainted operators in filing new P-5 Organization Reports, and their success in remaining behind the scenes while continuing operations under their new businesses (and continuing to receive the profits of their ventures), the Commission was attempting to broaden the scope of those who could be tainted, not narrow it. The Commission

intended the plain meaning of “beneficial interest” as a catch-all for any party receiving at least 25 percent of the benefits flowing from the operation of the organization, such benefits being primarily financial, though not limited to financial gain. Clearly, the intent of the amendment was to enlarge the scope of the statute, not to narrow it.

The narrow interpretation of “beneficial interest” as a term of art applied in the context of trusts as urged by Hahn would operate as a greater handicap to the Commission than the pre-1997 version of TNRC §91.114. Admittedly, the term “beneficial interest” is quite commonly used as a term of art in the context of trusts or wills, but this is not the exclusive context for its use.

“In speaking of land taxable to the owner of a beneficial interest who did not have legal title, the United States Supreme Court wrote in Montana Catholic Missions v. Missoula County, 200 U.S. 118, 26 S. Ct. 197, 50 L.Ed. 398 (1906): ...the expression “beneficial use” or “beneficial ownership or interest” in property is quite frequent in the law, and means, in this connection, such a right to its enjoyment as exists where the legal title is in one person and the right to such beneficial use or interest is in another, and where such right is recognized by law, and can be enforced by the courts, at the suit of such owner or of someone in his behalf. 26 S. Ct at 200. The Washington Supreme Court has written that “beneficial interest” is profit, benefit or advantage resulting from contract or ownership of estate as distinct from legal ownership or control. Christiansen v. Department of Social Security, 15 Wash. 2d 465, 131 P.2d 189 (1942).” (Cited in Satterlee v. Gulf Coast Waste Disposal Authority, 576 S.W.2d 773, Tex. (1978). The latter definition, by the Washington Supreme Court, is also quoted in a more recent case, Travis Central Appraisal District v. Signature Flight Support Corporation, 140 S.W.3d 833 (Tex. App.-Austin 2004).

In summary, the use of the term “beneficial interest” in TNRC §91.114 was added due to a Commission initiative and was intended in the broadest sense possible, in its plain and ordinary meaning, not as a term of art implying the necessary existence of a trust relationship. The interpretation urged by Hahn is the narrowest possible interpretation of the statutory language, and is an interpretation that would severely restrict the Commission’s efforts to deny permits to non-compliant operators.

B. Hahn’s Use of the Term “Beneficial Interest”

Hahn’s arguments rely heavily on definitions of various legal terms as presented in Black’s Law Dictionary (“Black’s”), Seventh Edition. The definitions in Black’s are helpful to practitioners of law, but are not exhaustive. The Preface to the examiner’s edition of Black’s (Sixth Edition) contains the following admonition:

“The language of the law is ever-changing as the courts, Congress, state legislatures, and administrative agencies continue to define, redefine and expand legal words and terms. Furthermore, many legal terms are subject to variations from state to state and again can differ under federal laws. Also, the type of legal issue, dispute, or transaction involved can affect a given definition usage. Accordingly, a legal dictionary should only be used as a “starting point” for definitions. Additional research should follow for state or federal variations, for further or later court interpretations, and for specific applications.” Black’s Law Dictionary, Sixth Edition, West 1991.

For the sake of argument, we can consider Hahn's argument on its own terms. Hahn quotes the definition of "beneficial interest" as "A right or expectancy in something (such as a trust or an estate), as opposed to legal title to that thing. For example, a person with a beneficial interest in a trust receives income from the trust but does not hold legal title to the trust property." Black's Law Dictionary, 7th Edition, West 1999. Hahn proceeds to argue that the term must imply the existence of a trust and that a "beneficial interest" in an organization is an indirect interest, for an individual receiving the benefit of stock held by a trustee who is the record owner of corporate stock.

However, as stated above, the definitions in Black's are not represented to be exhaustive. Black's is a legal dictionary, a secondary source, and its definitions do not necessarily reflect the law in Texas. Black's is written for general application to the law in the 50 states. Reference to caselaw demonstrates that a "beneficial interest" need not be confined to trust relationships, but may extend to other relationships as well.

"Under our authorities the corporation is a legal entity, distinct from its stockholders. In this regard, strictly speaking, the ownership of the corporate assets is vested in the corporation itself and not in its stockholders. Also, strictly speaking, the ownership of stock does not carry with it equitable title to the corporate property. This simply means, however, that the stockholders have no right to require the corporation to convey to them the legal title to the corporate property. In a larger or real sense, the stockholders of a corporation are the beneficial owners of its corporate properties. 10 Texas Jur. P. 781, par. 153; Yeaman v. Galveston City Co., 106 Tex. 389 (see page 426), 167 S.W. 710 (see page 723), AnnCas. 1917E, 191." McAlister v. Eclipse Oil Co., 98 S.W.2d 171 (Tex. 1936). (Emphasis added).

In this case, the application of the underlined portion of the cited case may be directly stated thusly: Hahn, as sole stockholder of Core E&P is the beneficial owner if its (Core's) corporate properties. A stockholder, as a beneficial owner, does not hold legal title to the corporate property (the corporation does), but is entitled to receive a beneficial interest from the corporate properties (a dividend, increased share value, disbursement upon winding up, etc).

The record shows that Hahn retained ownership of 100% of the outstanding shares in Core from December 15, 2001 until at least February 24, 2005, (shortly before this hearing) when he attempted the "donation" of his stock in the company to the bankruptcy trustee in a letter written for him by his counsel. Therefore, Hahn was in a position of beneficial ownership of at least 25 percent of the stock in Core with the attendant beneficial interests conferred by that ownership during the time of Core's violations of Commission rules, from July 1, 2002 through September 22, 2003, the date the Final Order in Docket No. 03-0233966 was signed, thus meeting the test under TNRC 91.114(c)(1)(D).

The argument presented thus far makes the common presumption that a corporation is a legal entity distinct from its shareholders and the ownership of its assets are vested in the corporation itself. There is an argument that the common presumption does not hold in this case. In certain circumstances, Texas law will disregard the legal fiction of separate corporate existence and hold the shareholders, or sole shareholder, liable for the corporation's debts and obligations under the alter ego doctrine, illegal purpose doctrine, or theory of sham to perpetuate a fraud. (See 15 Tex Jur 3d, Corporations, §§178-182)

III. Hahn's Permitting Disability under Commission Statewide Rule 78

As noted above, the Commission never intended the term "beneficial interest" as a narrow term of art solely applicable to trust situations. The Commission intended the term to be construed as broadly as possible to cover any form of benefit, gain or advantage derived from ownership or interest in a P-5 organization.

The Texas Railroad Commission incorporated the revised 1997 provisions of TNRC §91.114 into its own Statewide Rule 78, adopted in a rulemaking procedure published in October, 2003 at 28 Tex. Reg. 8890. Consistent with its intent that the term "beneficial interest" be construed broadly as an incident of ownership, the Commission rule uses the term "ownership or control", not "beneficial interest", and in Rule 78(a) defines owners as persons that are "owners of more than 25% ownership interest."

During the hearing, the examiner requested both parties to late-file a brief distinguishing between a "beneficial interest" in an organization and an "ownership interest" in an organization. On page 7 of the "Post-Hearing Brief of Michael Keith Hahn", Hahn states, "Keith Hahn, as the registered owner of stock in Core, had a direct ownership interest, as opposed to an indirect beneficial interest, in Core. Keith Hahn owned the capital stock; he was the registered owner on the corporate records of Core." Again, on Page 12 of the Brief, Hahn states, "Keith Hahn as owner of stock in Core, registered on the books of the corporation as the owner, has a direct interest, as opposed to having a "beneficial interest" "in the organization" known as Core - at the time the Railroad Commission Final Orders were entered against Core." Capital stock is defined, in part, in Black's Dictionary as "The shares of stock representing ownership of a business. The types of stock include preferred stock and common stock".

By Hahn's own admission, at the time of the violations found in Oil & Gas Docket No. 03-0233966, he was the sole owner of 100% of the capital stock in Core and had 100% of the ownership interest in the company, certainly more than a 25 percent ownership interest. Under Statewide Rule 78, the Commission correctly tainted Michael Keith Hahn for a period of seven years. Pursuant to the rule, the Commission must refuse to process Hahn's P-5 application for Preferred Pipeline Corp.

IV. Recommendation

The examiner recommends that the permitting disqualification attached to Michael Keith Hahn under Texas Natural Resources Code §91.114 and Commission Statewide Rule 78 remain attached.

The examiner further recommends that Michael Keith Hahn's request that his name be removed from the P-5 Organization Report of Core be denied. There is no evidence that Hahn's name appeared on the P-5 of Core through any kind of mistake or fraud. The evidence shows that Hahn served as an officer of Core for several years prior to his resignation on May 22, 2002. There is nothing in the record to demonstrate that Core will not be subject to further Enforcement action in the future for the time period in which Hahn was an officer and/or the time period of his ownership of 100 percent of the stock in Core.

FINDINGS OF FACT

1. Notice of Hearing was given on July 29, 2004 to all parties entitled to notice in this hearing.
2. All things necessary to the Commission attaining jurisdiction over the subject matter and the parties in this hearing have been performed or have occurred.
3. Applicant Michael Keith Hahn seeks removal of the permitting disqualification attached to him by operation of Texas Natural Resources Code §91.114 due to his association with Core E&P Corporation and its violation of Commission rules related to safety or the prevention or control of pollution as found by Final Order in Oil & Gas Docket No. 03-0233966, which became final and unappealable on October 16, 2003. Hahn additionally seeks removal of his name from the P-5 Organization Reports of Core E&P held in Commission records.
4. Hahn was not an officer of Core nor was he in a position of actual control of Core at the time the violation of Commission rules found in Oil & Gas Docket No. 02-0233966 ripened.
5. The period of time that Core was in violation of Commission rules related to safety or the prevention or control of pollution in Oil & Gas Docket No. 03-0233966 was from July 1, 2002 to September 22, 2003 (the date the Final Order in the docket was signed by the Commissioners).
6. Michael Keith Hahn owned 100% of the outstanding shares (capital stock) in Core E&P Corporation (previously Fischer Operating Corporation) from December 15, 2001 to at least February 24, 2005, a period of time that includes the time of the violations of Commission rules in Docket No. 03-0233966.
7. The 1997 amendments to TNRC §91.114, inserting the term “beneficial interest” in TNRC §91.114(c)(1)(D), expanded the class of persons subject to the statute as owners of an entity in violation of Commission rules.
8. Under Texas Natural Resources Code §91.114, any person having a beneficial interest of 25% or more in a company found to be in violation of Commission rules by a final order which has become unappealable is subject to a permitting disqualification for seven years from the date the order became final and unappealable.
9. Michael Keith Hahn owned 100 percent of the outstanding shares in Core E&P, constituting a beneficial interest, at the time of Core’s violation of Commission rules in Oil & Gas Docket No. 03-0233966.
10. Under Texas Railroad Commission Statewide Rule 78, any person having an ownership interest of more than 25% in a company found to be in violation of Commission rules by a final order which has become unappealable is subject to a permitting disqualification for seven years from the date the order became final and unappealable.
11. Michael Keith Hahn owned 100 percent of the outstanding shares in Core E&P at the time

of Core's violations of Commission rules in Oil & Gas Docket No. 03-0233966.

12. There is no evidence that Michael Keith Hahn's name appeared on the P-5 Organization Report of Core E&P through mistake or fraud.
13. There is no indication that Core E&P will not be subject to further Enforcement action in the future for the time period during which Michael Keith Hahn was an officer or for the time period he owned at least 25 percent of the beneficial interest in Core E&P.

CONCLUSIONS OF LAW

1. Proper notice was timely given to all parties legally entitled to notice.
2. Under Texas Natural Resources Code §91.114, Michael Keith Hahn had "at least 25% of the beneficial interest" in Core E&P Corporation during the time it was in violation of Commission rules related to safety or the prevention or control of pollution and thus a permitting disqualification attached to him on October 16, 2003, the date the Final Order in Oil & Gas Docket No. 03-0233966 became unappealable.
3. Under Texas Railroad Commission Statewide Rule 78, Michael Keith Hahn was the owner of "more than 25% ownership interest" in Core E&P Corporation at the time that it was in violation of Commission rules related to safety or the prevention or control of pollution and thus a permitting disqualification attached to him on October 16, 2003, the date the Final Order in Oil & Gas Docket No. 03-0233966 became unappealable.
4. Michael Keith Hahn should remain listed as an officer on the P-5 Organization Reports of Core E&P already on file with the Commission.

EXAMINERS' RECOMMENDATION

Based on the above findings and conclusions of law, the examiner recommends that Michael Keith Hahn's request for the removal of the permitting disqualification attached to him pursuant to TNRC §91.114 and Statewide Rule 78 be denied.

The examiner further recommends that Michael Keith Hahn's request that his name be removed from the Commission's P-5 records of Core E&P be denied.

Respectfully submitted,

Marshall Enquist
Hearings Examiner
Office of General Counsel